

In Our View: Court Should Not Take Sides

Bill that would require justices to declare party preference misguided, petty

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Not content to wait until they convene in January, some lawmakers have fired a shot in the renewed battle of Legislature v. Supreme Court. A bipartisan group of legislators has pre-filed House Bill 1051, which would require candidates for the state's highest court to declare a party preference instead of running in nonpartisan races.

The kindling for this bonfire would appear to be the court's 2012 ruling in *McCleary v. Washington*, which mandated that the Legislature must live up to what the state constitution says is its "paramount duty" — adequate funding for K-12 education. The justices at that time retained jurisdiction over the issue, with Justice Debra Stephens explaining that in the *McCleary* case, "The court is not concerned with whether the state has done too much, but whether it has done enough. Positive constitutional rights do not restrain government action, they require it."

Since then, the justices have held that lawmakers have not done enough to meet their paramount duty. Earlier this year, they held the Legislature in contempt, while declining to impose immediate sanctions. Some lawmakers countered by saying the court is violating the separation of powers.

That provides the background for this playground scrum. The update is HB 1051, in which the first section reads, "The legislature finds that because the supreme court has decided to act like the legislature and has thus violated the separation of powers, the supreme court should be considered partisan like the legislature." They might as well have fired spitballs and stuck out their tongues.

Amid the curiosities surrounding the proposal is that Clark County Republicans Paul Harris, Brandon Vick, and Liz Pike are among the co-sponsors. While Republicans typically are the most vocal critics of the Supreme Court's role in implementing the *McCleary* decision, the desire for any member of the party to have justices campaign under partisan labels is nonsensical. In case they haven't noticed, Secretary of State Kim Wyman is the only Republican to hold statewide office — and the only one from any of the West Coast states. Requiring candidates for the court to run under partisan labels would ensure a liberal Supreme Court in a decidedly blue state. As The (Spokane) *Spokesman-Review* wrote editorially, "Put 'prefers Republican' behind a candidate's name for state office, and he or she may as well throw themselves under a King County Metro Transit bus."

Instead, lawmakers frustrated with the court's role in *McCleary v. Washington* would be wise to explore the reasoning behind the decision and wise to seek solutions. "The reason this court in *McCleary* retained jurisdiction is because of what happened in the wake of the 1978 decision," Stephens told The Columbian's Editorial Board earlier this year. More than three decades ago, the court ruled that forcing school districts to rely upon local levies to fund schools was unconstitutional ... and then the Legislature spent three decades mostly ignoring that decision.

Since the McCleary decision, lawmakers' progress toward meeting the mandate has been muddled. As Chief Justice Barbara Madsen wrote early this year in assessing that progress, "It is incumbent upon the State to demonstrate, through immediate, concrete action, that it is making real and measurable progress, not simply promises."

All of which would seem to be a clear directive — one that does not include requiring justices to run partisan races.